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Cronan O'Connell
Vice President-Federal Regulatory

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EX PARTE

July 12, 2005

DOCKET FILE COPY ORIGINAL **RECEIVED**

JUL 12 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Federal Communications Commission
Office of Secretary

RE: WC Docket No. 04-223 *In the Matter of Petition of Qwest Corporation for
Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*

Dear Ms. Dortch:

On July 11, 2005, Cronan O'Connell and Melissa Newman of Qwest met with Russ Hanser,
Legal Advisor to Commissioner Kathleen Abernathy, to discuss the above-named docket.

The attached document was used in the discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "Cronan O'Connell". The signature is fluid and cursive, with the first name "Cronan" and last name "O'Connell" clearly distinguishable.

Attachment

Copy to:
Russ Hanser – russ.hanser@fcc.gov

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List ABCDE

Qwest[®]



Spirit of Service

Omaha Forbearance Petition WC Docket 04-223

Redacted Version

July 2005

Why We Are Here

- ❑ **The days of Qwest's dominance in the Omaha MSA are irreversibly over**
 - **The Omaha MSA is already deregulated at the state level. Nebraska in 1986 and Iowa in December 2004**
- ❑ **The retail market is fully competitive**
- ❑ **Competition has worked. There are now a multitude of competitive choices available to business and residential customers in Omaha from intermodal and intramodal carriers**
- ❑ **It is no longer rational, appropriate or necessary to apply dominant carrier and 251(c) requirements to Qwest and Qwest alone in the Omaha MSA**

Competitive Market Analysis

- ❑ **The Commission needs merely to look at the facts on the ground in Omaha:**
 - **Both intermodal and intramodal carriers compete in Omaha**
 - Wholesale and retail competition BOTH count. You can not choose which carriers count or do not count
 - **Competitors' Mass Market and Enterprise marketshare is over CONFIDENTIAL [XX%]**
 - **Competitors use both special access and self-provisioned loops to compete**
 - **Competition is irreversible even without taking wireless and VoIP into consideration**

Erosion of Qwest's Retail Access Line Base in the Omaha MSA ⁽²⁾ 1997 - 2004

Qwest Retail Lines in Service (1)	Dec. 1997	Dec. 1998	Dec. 1999	Dec. 2000 (3)	Feb. 2004 (3)	Dec. 2004
Res.	278,678	274,843	260,023	236,725	136,572	120,485
Bus.	125,116	124,205	118,999	113,624	81,749	80,426
Total	403,794	399,048	379,022	350,349	218,321	200,911

Source: Qwest Forecast Data Mart ("FDM") retail services tracking system.

(1) Excludes Qwest Official Company Service and Public Coin lines.

(2) Excludes effects of market growth.

(3) Data shown at P. 3 of the Affidavit of David L. Teitzel in this docket.

Access Line Breakout for Omaha MSA as of February 2004 CONFIDENTIAL

	Residence	Business	Total
Resold lines	XX	XX	XX
UNE-P listings	XX	XX	XX
E911 records	XX	XX	XX
Total CLEC lines	XX	XX	XX
Qwest retail lines and % market share	XX	XX	XX
Total Omaha MSA market lines	XX	XX	XX
% CLEC lines in Omaha MSA	XX	XX	XX

Relief Requested

Obligation:	Relief Requested:	Remaining Obligations:
Section 251(c)	<ul style="list-style-type: none"> • §251(c)(3) Unbundled access to narrowband UNE loops and transport • §251(c)(2)(D) TELRIC pricing • §251(c)(4) Resale at a discount • §251(c)(2)(B) Interconnection at any technically feasible point • §251(c)(6) Collocation 	<ul style="list-style-type: none"> • Duty to negotiate in good faith • Duty to interconnect • All §251(a) and §251(b) obligations including interconnection, resale, number portability, access to rights of way and reciprocal compensation • All §201 and §202 obligations
Section 251(h)(1)	<ul style="list-style-type: none"> • Incumbent LEC designation & regulation 	
Section 271(c)(2)(B) i, ii, iv-vi, xiv	<ul style="list-style-type: none"> • (i) Interconnection at any technically feasible point • (ii) Nondiscriminatory access to narrowband UNE loops and transport and switching at TELRIC pricing • (iv) Access to narrowband loop and transport network elements • (vi) Access to switching network element • (xiv) Resale at a discount 	<ul style="list-style-type: none"> • Duty to interconnect • Duty to permit access to rights of way • Duty to allow resale (without discount) of telecommunications services
Relief from Dominant Carrier Regulation of Interstate Services	<ul style="list-style-type: none"> • Tariffing and cost support for Interstate Access Services 	<ul style="list-style-type: none"> • Same tariffing obligations as CLECs

Qwest's Forbearance Request Serves the Public Interest

- ❑ **The Section 10(a) forbearance criteria are met.**
 - Enforcement of such regulation is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable because Sections 201 and 202 will still apply
 - Enforcement of such regulation or provision is not necessary for the protection of consumers because competition in Omaha is irreversible
 - Forbearance from applying such provision or regulation is consistent with the public interest
 - Competition has and will continue to increase consumer choices, in terms of services and service providers; and
 - The public interest cannot possibly be served if the minority provider in a market is regulated as the dominant player, and the dominant provider is deregulated
- ❑ **The Section 10(b) criterion (promotes competitive market conditions) is also easily met**
 - The dominant player (Cox) will be incented to continue to construct its own facilities. Given the huge size and market share of Cox, Cox is clearly able to expand its facilities, and will, with proper incentives, continue to be motivated to bring about true competition upon grant of the Qwest petition.